

**Notice of Allowability**

Application No.

09/585,134

Examiner

Katherine W. Mitchell

Applicant(s)

ALBERTSON ET AL.

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 11/28/2005.
2. ☒ The allowed claim(s) is/are 14,17-19 and 46-54.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                  |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>20051208</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment  |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                                    |
|   | 9. <input type="checkbox"/> Other _____.   |

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

2. Authorization for this examiner's amendment was given in a telephone interview with John Giezentanner on 12/6/2005.

3. The application has been amended as follows:

**In the Specification:**

On page 1, line 7, --and also claims priority as a continuation of US Patent 6,095,739, filed 7/2/1998-- immediately after "60/051652" .

**In the Claims:**

Claim 14 has been amended to insert --and-- between 'fastener' and 'connector' in line 1.

Claim 14 line 10 has been amended to insert --is required by regulation and -- immediately after 'connector which'.

Claim 14 line 12 has been amended to insert --of connectors used in the building construction arts, said building construction connectors -- immediately after 'the group'.

Claim 14 line 16 has been amended to insert --an exterior surface of the-- immediately after 'colored indicia on'.

4. The following is an examiner's statement of **reasons for allowance**:

First, examiner notes that "finished fastener" is taken to mean a fastener which

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could be used as is, not requiring the color applied to the surface to be a functionally complete fastener. This is specifically intended to exclude galvanized fasteners without any additional color coating -- that is, the galvanized coating is NOT considered a color-coding coating. Examiner further notes that this is inherent in the specification and drawings -- for example, page 9, the bottom paragraph continuing to page 10 and the first full paragraph on page 10 make clear that the "common wire nails" are regular, ready-to-use nails (Fig 1A) and that the same nails have color applied to at least some surface (Fig 1B) as part of the claimed invention. In examiner's opinion, a common wire nail of Fig 1A could not be a nail awaiting galvanizing, as this would not be considered by one of ordinary skill to be a common wire nail, and certainly not a finished fastener.

The independent claim requires a finished fastener and a finished connector both having color applied to at least some exterior surface such that the color matches and serves to indicate at least two physical properties of the fastener required to be used with the matching connector. While a color coding key in and of itself is not novel, the combination of the colored fastener, same-colored building construction connector, and color coding key, in effect serving as a pre-assembled kit to correlate a specific color to at least two different physical properties of the finished fastener, would require the claimed apparatus (fastener, connector and key) to be able to perform a specific function (identifying at least two physical properties by a single color to ensure that a fastener and building construction connector are properly mated). A fastener and connector, painted the same color after assembly to, for example, indicate that they had been inspected or to achieve a decorative appearance, would not meet this limitation.

Examiner further notes that applicant has used "connote" in claim 17 in a manner that indicates applicant has intended (see para 11 and 16 of specification) to define it as --indicate-- or --denote-- is more commonly used.

con·note (kə-nōt') *verb, transitive*

1. To suggest or imply in addition to literal meaning: "*The term 'liberal arts' connotes a certain elevation above utilitarian concerns*" (George F. Will). See Usage Note at denote.

2. To have as a related or attendant condition: <sup>1</sup>

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine W. Mitchell whose telephone number is 571-272-7069. The examiner can normally be reached on Mon - Thurs 10 AM - 8 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

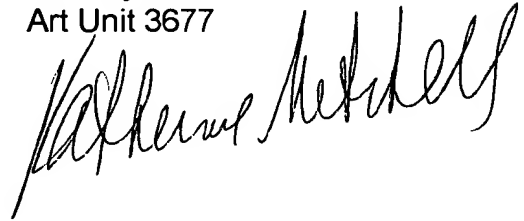
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7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Katherine W Mitchell  
Primary Examiner  
Art Unit 3677



Kwm  
12/6/2005